

Before the
Administrative Hearing Commission
State of Missouri



MEREDITH LUBOW, PH.D.

Petitioner,

v.

STATE COMMITTEE
OF PSYCHOLOGISTS,

Respondent.

No. 12-1296 PS

DECISION

We deny the application of the petitioner, Meredith Lubow, Ph.D., for licensure as a psychologist in Missouri. She does not have a doctoral degree as defined by § 337.035, RSMo.¹

Procedure

Dr. Lubow filed a complaint with this Commission on July 18, 2012, appealing the State Committee of Psychologists' denial of her application for Missouri licensure.

Both parties filed motions for summary decision, which we denied. We held a hearing on February 13, 2013. The case became ready for decision on March 7, 2013, when the parties completed their written briefing.

¹ All references to "RSMo" are to the Revised Statutes of Missouri (2000), unless otherwise noted.

Findings of Fact

1. Dr. Lubow attended Pacifica Graduate Institute in Carpinteria, California, from September 23, 2005, through December 2, 2009, and received a Ph.D. in clinical psychology from Pacifica (“the program”) in December 2009.
2. The program is not accredited by the American Psychological Association, nor approved by the Association of State and Provincial Psychology Boards, or the Council for the National Register of Health Service Providers in Psychology.
3. The program operates on a quarterly academic system with no summer break. Classes are held on campus during one week of each month, the “learning session.”
4. Specifically, during the learning sessions, classes take place on campus over four days, Thursday through Sunday, once every month during the fall, winter, and spring, and over seven days during the summer. Classes are not held during the other three weeks of a month.
5. A learning session involves face-to-face instruction by professors. Students attend more than nine hours of classes in total during the week.
6. The program required students to attend classes on campus during the learning sessions. During the remaining three weeks of a month, the program did not require students to be on campus, although some students, like Dr. Lubow, chose to be.
7. Dr. Lubow applied to the Committee for licensure in Missouri under § 337.025.3 on February 27, 2012.
8. By letter dated June 20, 2012, the Committee notified Dr. Lubow of its denial of her application because the program did not meet the requirements of § 337.025.3(3)(h).

Conclusions of Law

Dr. Lubow cannot satisfy the curriculum requirement of § 337.025.3(3)(h) and therefore is not entitled to licensure.

Preliminary matters

We have jurisdiction of this matter under §337.035, and § 621.120, RSMo. In rendering our decision, we exercise the same authority as the Committee. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990). Therefore, we simply decide the application *de novo*. *State Bd. of Regis. for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App. K.C.D. 1974).

Dr. Lubow bears the burden of proving she is entitled to licensure, § 621.120, by a preponderance of the evidence, *see State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000) (civil standard of “preponderance” applies in administrative proceedings). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Berry*, 32 S.W.3d at 642.

We must judge the credibility of witnesses, and may believe all, part, or none of the testimony of any witness. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992).

Discussion

The Committee is an agency of the State of Missouri, created and established under § 337.050 for the purpose of executing and enforcing the provisions of §§ 337.010 to 337.090, RSMo (Supp. 2012), which regulate the practice of psychology.

Section 337.025 “govern[s] the education and experience requirements for initial licensure as a psychologist” in Missouri. Under § 337.025.3(1) and (2), if an applicant’s doctoral degree program in psychology is accredited or approved by an organization therein listed, the

applicant need not show that her program meets the nine separate criteria set forth in § 337.025.3(3). The program Dr. Lubow completed at Pacifica was not accredited or approved by an organization qualifying under subsection (1) or (2).

Therefore, Dr. Lubow must demonstrate that the program meets all nine criteria in subsection (3). The Committee stipulated for purposes of this case that Pacifica's program met eight of them,² but not the curriculum requirement found in § 337.025.3(3)(h), which provides:

The curriculum shall encompass a minimum of three academic years of full-time graduate study, with a minimum of one year's residency at the educational institution granting the doctoral degree[.]

We must give effect to “every word, clause, sentence, and provision of a statute.” *Civil Svc. Comm’n of City of St. Louis v. Members of Bd. of Aldermen of City of St. Louis*, 92 S.W.3d 785, 788 (Mo. banc 2003). And we afford words used in a statute their plain and ordinary meaning, as found in the dictionary. *Utility Service Co., Inc. v. Dep’t of Labor and Indus. Relations*, 331 S.W.3d 654, 658 (Mo. banc 2011); *Vaughn v. Mo. Dep’t of Soc. Svs.*, 323 S.W.3d 44, 48 (Mo. App. E.D. 2010).

For purposes of subsection (3)(h), a curriculum is:

1: the whole body of courses offered by an educational institution or one of its branches < widening the college ~ > **2:** any particular body of courses set for various majors < the ~ in engineering > < the premedical ~ > **3:** all planned school activities including besides courses of study organized play, athletics, dramatics, clubs, and home-room program....

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 557 (1986).

Under the dictionary definition, a curriculum is a formal set of requirements, established by a school. A curriculum is not established student-by-student, based on activities in which a

²

Jt. Stip. ¶14.

student engages. The Committee essentially applies this dictionary definition for purposes of subsection (3)(h), by examining the requirements of a program, not what an individual student did in a program. If a program meets the requirements, a graduate of the program is eligible for licensure.³ We agree with that approach.

Subsection (3)(h) also specifies that one year of a qualifying curriculum must be in residence at the educational institution. The one-year residency concept is not defined by statute, but is specifically defined by a regulation, which we are bound to follow. *Utility Service*, 331 S.W.3d at 660 (a regulation can fill in a statutory gap); *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 159 S.W.3d 361, 365 (Mo. banc 2005)(a well-promulgated regulation has the force and effect of law). For purposes of § 337.025.3(h), one year’s residency is

at least nine (9) hours of weekly face-to-face psychological instruction, supervision, and/or consultation with multiple program faculty and students at the educational institution for a minimum of one (1) year.

20 CSR 2235-2.005(5).⁴

Dr. Lubow was in the program for three years, and she points to her first year—academic year September 2005 through September 2006—as fulfilling the curriculum requirement of one-year’s residency.⁵ She does not demonstrate, by a preponderance of the evidence, that Pacifica’s curriculum included the one-year residency as defined by regulation. Clearly, the curriculum encompassed one week per month of at least nine hours of qualifying activity at the educational institution—in the form of classes that involved face-to-face psychological instruction, supervision, or consultation with multiple program faculty and students—for a period of at least

³ Exhibit 3, Goose Depo. pp. 44-45.

⁴ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

⁵ Tr. 19.

one year. But the evidence does not demonstrate that the curriculum included nine hours of such activity per week at the educational institution, during the other three weeks of a month for a period of at least one year.

Dr. Lubow's testimony about a curricular requirement to spend time on campus is a legal conclusion for purposes of § 337.025.3(3)(h) and 20 CSR 2235-2.005(5), and we disagree with that conclusion. She testified that when she began at Pacifica, the program chair "outlined all of the requirements for the curriculum and he described the course of the three years, and he told us about needing to be in attendance at classes and between classes working with professors and faculty in between the learning sessions. It was also outlined in the handbook and dissertation manual as well."⁶ She offered no handbook or dissertation manual, and as her testimony proceeded to demonstrate, the requirements to which she referred were practical ones, not curricular ones.

For example, she testified that if a student was not on campus in between the learning sessions, she could not understand how the student "could otherwise accomplish the curriculum set out in the program."⁷ She testified that when she began the program, the professors "recommended" she live near campus her first year, which she thought a natural choice because the first year, next to the third one, was the most rigorous.⁸ Such observations or considerations demonstrate practical concerns and do not meet the applicable standard here: a formal requirement, established by the school's curriculum, that students be at the educational institution every week for a year, for at least nine hours a week, involved in qualifying activity.

⁶ Tr. 20.

⁷ Tr. 38.

⁸ Tr. 20.

Other evidence more specifically demonstrates that she did not and cannot establish the standard. A professor from the program, Dr. Lionel Corbett, and a fellow student, Dr. Sandra Alvarado (who ultimately graduated from the program) were Dr. Lubow's witnesses, and she placed their depositions in evidence. They testified that students were only required to be on campus for the formal class, or learning, sessions.⁹ Dr. Alvarado further testified that Pacifica did not require students to be on campus a certain amount of hours between the learning sessions, although she thought it would be difficult to complete the program without being on campus.¹⁰

We also observe that the very structure of Pacifica's academic calendar—one week in class, three weeks off—suggests the program was designed precisely to offer the flexibility to students to commute in for one week a month, and go home for part or all of the other three weeks a month.¹¹

Dr. Lubow points to a letter written by Pacifica's current program chair, Matthew Bennett, Psy.D., to the Committee as part of her application for Missouri licensure, in which he stated:

I am pleased to verify that the Ph.D. program in Clinical Psychology at Pacifica Graduate Institute is a residential program. The program involves three academic years of full-time residential graduate study at the academic institution. Students average more than nine hours of regular weekly psychological instruction, supervision, and/or consultation which includes face-to-face contact with program faculty, training supervisors, and other students.^[12]

⁹ Exhibit 2, Corbett Depo. pp. 10-11; Exhibit 1, Alvarado Depo. pp. 16-17 and 23.

¹⁰ Exhibit 1, Alvarado Depo. pp. 16-17 and 23.

¹¹ Both Drs. Corbett and Alvarado in fact noted that some students only came to the Pacifica campus during the learning sessions, not the weeks in between. Exhibit 2, Corbett Depo. pp. 12; Exhibit 1, Alvarado Depo. pp. 16.

¹² Exhibit 3, Goose Depo. p. 30 and Depo. Exhibit 5 at p. 40.

The letter is of little evidentiary weight, and we do not find this evidence sufficient to tip the scales in favor of Dr. Lubow, for at least three reasons. First, although Dr. Bennett states the program was “residential,” his description does not track the curriculum and residency definitions established by statute and regulation. He states that the program involves three academic years of full-time residential graduate study at the academic institution. But Dr. Lubow admitted that her second and third academic years did not involve nine hours weekly on campus because, during that period of time, she was working on the curricular requirement to accumulate her internship hours.¹³

Further, even if students did “average more than nine hours...weekly[,]” Dr. Bennett does not state whether those hours were part of the school-established curriculum, or whether he was simply describing what typically occurred, as a practical matter.

We also note that Dr. Bennett described the nine hours as an “average.” But an average is simply an average, and means the actual quantity from week to week is sometimes more, sometimes less.¹⁴ The one year’s residency regulation requires at least nine hours per week, for one year. Demonstrating an average number of hours is not sufficient.

Plainly, Dr. Lubow was a dedicated student, who took her studies seriously and determined that successful pursuit of her graduate degree “required” the week-in, week-out, time she spent on campus during her first academic year. But the evidence does not demonstrate that the time she spent was a part of the school’s curriculum. It instead reflects the practicalities of her diligent pursuit of such a graduate degree.

¹³ Tr. 44-45.

¹⁴ Dr. Alvarado estimated that students would need to spend four to five hours a week in between learning sessions to get their work done. Exhibit 1, Alvarado Depo. pp. 16-17.

Dr. Lubow has not established by a preponderance of the evidence that the program meets the curriculum requirement of § 337.025.3(3)(h).

Summary

We deny Dr. Lubow's application.

SO ORDERED on April 5, 2013.

/s/ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner